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To: Judiciary A

HOUSE BILL NO. 592

1 AN ACT TO CREATE NEW SECTION 43-19-36, MISSISSIPPI CODE OF
2 1972, TO PROVIDE THAT CHILD SUPPORT OBLIGATIONS SHALL BE SUSPENDED
3 BY OPERATION OF LAW FOR PERSONS ORDERED TO PAY CHILD SUPPORT WHO
4 ARE INCARCERATED OR INVOLUNTARILY INSTITUTIONALIZED FOR MORE THAN
5 180 DAYS, WITH CERTAIN EXCEPTIONS; TO PROVIDE THAT THE CHILD
6 SUPPORT OBLIGATION WILL RESUME 60 DAYS AFTER THE NONCUSTODIAL
7 PARENT IS RELEASED FROM INCARCERATION, AND THE NONCUSTODIAL
8 PARENT'S CHILD SUPPORT ORDER AND OBLIGATION WILL BECOME
9 ENFORCEABLE ON THAT DATE; TO AUTHORIZE THE DEPARTMENT OF HUMAN
10 SERVICES WHEN ENFORCING A CHILD SUPPORT ORDER TO ADMINISTRATIVELY
11 ADJUST THE ARREARS BALANCE FOR AN ORDER FOR CHILD SUPPORT THAT WAS
12 SUSPENDED BECAUSE OF INCARCERATION OR INSTITUTIONALIZATION UNDER
13 CERTAIN CONDITIONS; TO AMEND SECTIONS 93-11-65, 93-11-71 AND
14 93-5-23, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
15 SECTION; AND FOR RELATED PURPOSES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17 **SECTION 1.** The following shall be codified as Section
18 43-19-36, Mississippi Code of 1972:

19 43-19-36. (1) For the purposes of this section, the
20 following terms shall be defined as provided in this subsection:

21 (a) "Incarcerated or involuntarily institutionalized"
22 includes, but is not limited to, involuntary confinement to a
23 federal or state prison or correctional facility, a county jail, a
24 juvenile detention center or a mental health facility. This term



25 does not include probation or work release, and the one hundred
26 and eighty (180) consecutive days excludes credit for time served
27 before sentencing.

28 (b) "Child support obligation" means the payment due on
29 the current child support order, an arrears payment on a
30 preexisting arrears balance, or interest on arrears.

31 (c) "Suspension" means a child support obligation being
32 administratively set to Zero Dollars (\$0.00) for the period in
33 which the person owing support is incarcerated or involuntarily
34 institutionalized, and prevents the accrual of arrears during that
35 period of incarceration.

36 (2) Child support obligations shall be suspended, by
37 operation of law, for any period exceeding one hundred and eighty
38 (180) consecutive days in which the person ordered to pay support
39 is incarcerated or involuntarily institutionalized, unless either
40 of the following conditions exists:

41 (a) The person owing support has the means to pay
42 support in accordance with the guidelines established in 43-19-101
43 and 43-19-103 while incarcerated or involuntarily
44 institutionalized; or

45 (b) The person owing support was incarcerated or
46 involuntarily institutionalized for an offense constituting
47 domestic violence under Section 97-3-7, child abuse under Section
48 97-5-39, or criminal nonpayment of child support under Section
49 97-5-3.



50 (3) The child support obligation will resume the first day
51 of the month following the expiration of sixty (60) days after the
52 date the noncustodial parent is released from incarceration, and
53 the noncustodial parent's child support order and obligation will
54 become enforceable on that date. This section does not preclude a
55 person owing support from seeking a modification of the child
56 support order based on a change in circumstances or other
57 appropriate reason.

58 (4) (a) The Department of Human Services enforcing a child
59 support order under Title IV-D of the Social Security Act (42 USC
60 Section 651 et seq.) may, upon written notice of the proposed
61 adjustment to the obligor and the obligee, administratively adjust
62 the arrears balance for an order for child support suspended under
63 subsection (2) of this act if all of the following occur:

64 (i) The department verifies that arrears were
65 accrued in violation of this section;

66 (ii) The department verifies that neither of the
67 conditions set forth in paragraph (a) or (b) of subsection (2) of
68 this section exist; and

69 (iii) Neither the support obligor nor obligee
70 objects in writing within thirty (30) days of receipt of the
71 notice of proposed adjustment by the department.

72 (b) If either the support obligor or obligee objects to
73 the administrative adjustment set forth in this subsection, the



74 department shall file a petition with the court for a
75 determination of the arrears balance.

76 (c) The department may perform this adjustment without
77 regard to whether it was enforcing the child support order at the
78 time the parent owing support qualified for relief under this
79 section.

80 (5) This section does not prohibit the department or a party
81 from petitioning a court for a determination of child support or
82 arrears amounts.

83 (6) This section applies to every child support obligation
84 in which the person who is ordered to pay is incarcerated for one
85 hundred and eighty (180) consecutive days after the enactment of
86 this section.

87 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
88 amended as follows:

89 93-11-65. (1) (a) In addition to the right to proceed
90 under Section 93-5-23, Mississippi Code of 1972, and in addition
91 to the remedy of habeas corpus in proper cases, and other existing
92 remedies, the chancery court of the proper county shall have
93 jurisdiction to entertain suits for the custody, care, support and
94 maintenance of minor children and to hear and determine all such
95 matters, and shall, if need be, require bond, sureties or other
96 guarantee to secure any order for periodic payments for the
97 maintenance or support of a child. In the event a legally
98 responsible parent has health insurance available to him or her



99 through an employer or organization that may extend benefits to
100 the dependents of such parent, any order of support issued against
101 such parent may require him or her to exercise the option of
102 additional coverage in favor of such children as he or she is
103 legally responsible to support. Proceedings may be brought by or
104 against a resident or nonresident of the State of Mississippi,
105 whether or not having the actual custody of minor children, for
106 the purpose of judicially determining the legal custody of a
107 child. All actions herein authorized may be brought in the county
108 where the child is actually residing, or in the county of the
109 residence of the party who has actual custody, or of the residence
110 of the defendant. Process shall be had upon the parties as
111 provided by law for process in person or by publication, if they
112 be nonresidents of the state or residents of another jurisdiction
113 or are not found therein after diligent search and inquiry or are
114 unknown after diligent search and inquiry; provided that the court
115 or chancellor in vacation may fix a date in termtime or in
116 vacation to which process may be returnable and shall have power
117 to proceed in termtime or vacation. Provided, however, that if
118 the court shall find that both parties are fit and proper persons
119 to have custody of the children, and that either party is able to
120 adequately provide for the care and maintenance of the children,
121 the chancellor may consider the preference of a child of twelve
122 (12) years of age or older as to the parent with whom the child
123 would prefer to live in determining what would be in the best



124 interest and welfare of the child. The chancellor shall place on
125 the record the reason or reasons for which the award of custody
126 was made and explain in detail why the wishes of any child were or
127 were not honored.

128 (b) An order of child support shall specify the sum to
129 be paid weekly or otherwise. In addition to providing for support
130 and education, the order shall also provide for the support of the
131 child prior to the making of the order for child support, and such
132 other expenses as the court may deem proper.

133 (c) The court may require the payment to be made to the
134 custodial parent, or to some person or corporation to be
135 designated by the court as trustee, but if the child or custodial
136 parent is receiving public assistance, the Department of Human
137 Services shall be made the trustee.

138 (d) The noncustodial parent's liabilities for past
139 education and necessary support and maintenance and other expenses
140 are limited to a period of one (1) year next preceding the
141 commencement of an action.

142 (2) Provided further, that where the proof shows that both
143 parents have separate incomes or estates, the court may require
144 that each parent contribute to the support and maintenance of the
145 children in proportion to the relative financial ability of each.

146 (3) Except as otherwise provided in Section 1 of this act
147 for persons who are incarcerated or involuntarily
148 institutionalized, whenever the court has ordered a party to make



149 periodic payments for the maintenance or support of a child, but
150 no bond, sureties or other guarantee has been required to secure
151 such payments, and whenever such payments as have become due
152 remain unpaid for a period of at least thirty (30) days, the court
153 may, upon petition of the person to whom such payments are owing,
154 or such person's legal representative, enter an order requiring
155 that bond, sureties or other security be given by the person
156 obligated to make such payments, the amount and sufficiency of
157 which shall be approved by the court. The obligor shall, as in
158 other civil actions, be served with process and shall be entitled
159 to a hearing in such case.

160 (4) When a charge of abuse or neglect of a child first
161 arises in the course of a custody or maintenance action pending in
162 the chancery court pursuant to this section, the chancery court
163 may proceed with the investigation, hearing and determination of
164 such abuse or neglect charge as a part of its hearing and
165 determination of the custody or maintenance issue as between the
166 parents, as provided in Section 43-21-151, notwithstanding the
167 other provisions of the Youth Court Law. The proceedings in
168 chancery court on the abuse or neglect charge shall be
169 confidential in the same manner as provided in youth court
170 proceedings, and the chancery court shall appoint a guardian ad
171 litem in such cases, as provided under Section 43-21-121 for youth
172 court proceedings, who shall be an attorney. In determining
173 whether any portion of a guardian ad litem's fee shall be assessed



174 against any party or parties as a cost of court for reimbursement
175 to the county, the court shall consider each party's individual
176 ability to pay. Unless the chancery court's jurisdiction has been
177 terminated, all disposition orders in such cases for placement
178 with the Department of Human Services shall be reviewed by the
179 court or designated authority at least annually to determine if
180 continued placement with the department is in the best interest of
181 the child or the public.

182 (5) Each party to a paternity or child support proceeding
183 shall notify the other within five (5) days after any change of
184 address. In addition, the noncustodial and custodial parent shall
185 file and update, with the court and with the state case registry,
186 information on that party's location and identity, including
187 social security number, residential and mailing addresses,
188 telephone numbers, photograph, driver's license number, and name,
189 address and telephone number of the party's employer. This
190 information shall be required upon entry of an order or within
191 five (5) days of a change of address.

192 (6) In any case subsequently enforced by the Department of
193 Human Services pursuant to Title IV-D of the Social Security Act,
194 the court shall have continuing jurisdiction.

195 (7) In any subsequent child support enforcement action
196 between the parties, upon sufficient showing that diligent effort
197 has been made to ascertain the location of a party, due process
198 requirements for notice and service of process shall be deemed to



199 be met with respect to the party upon delivery of written notice
200 to the most recent residential or employer address filed with the
201 state case registry.

202 (8) (a) The duty of support of a child terminates upon the
203 emancipation of the child. Unless otherwise provided for in the
204 underlying child support judgment, emancipation shall occur when
205 the child:

206 (i) Attains the age of twenty-one (21) years, or

207 (ii) Marries, or

208 (iii) Joins the military and serves on a full-time
209 basis, or

210 (iv) Is convicted of a felony and is sentenced to
211 incarceration of two (2) or more years for committing such
212 felony; * * *

213 (b) Unless otherwise provided for in the underlying
214 child support judgment, the court may determine that emancipation
215 has occurred and no other support obligation exists when the
216 child:

217 (i) Discontinues full-time enrollment in school
218 having attained the age of eighteen (18) years, unless the child
219 is disabled, or

220 (ii) Voluntarily moves from the home of the
221 custodial parent or guardian, establishes independent living
222 arrangements, obtains full-time employment and discontinues



223 educational endeavors prior to attaining the age of twenty-one
224 (21) years, or

225 (iii) Cohabits with another person without the
226 approval of the parent obligated to pay support; * * *

227 (c) The duty of support of a child who is incarcerated
228 but not emancipated shall be suspended for the period of the
229 child's incarceration.

230 (9) A determination of emancipation does not terminate any
231 obligation of the noncustodial parent to satisfy arrearage
232 existing as of the date of emancipation; the total amount of
233 periodic support due prior to the emancipation plus any periodic
234 amounts ordered paid toward the arrearage shall continue to be
235 owed until satisfaction of the arrearage in full, in addition to
236 the right of the person for whom the obligation is owed to execute
237 for collection as may be provided by law.

238 (10) Upon motion of a party requesting temporary child
239 support pending a determination of parentage, temporary support
240 shall be ordered if there is clear and convincing evidence of
241 paternity on the basis of genetic tests or other evidence, unless
242 the court makes written findings of fact on the record that the
243 award of temporary support would be unjust or inappropriate in a
244 particular case.

245 (11) Custody and visitation upon military temporary duty,
246 deployment or mobilization shall be governed by Section 93-5-34.



247 **SECTION 3.** Section 93-11-71, Mississippi Code of 1972, is
248 amended as follows:

249 93-11-71. (1) Except as otherwise provided in Section 1 of
250 this act for persons who are incarcerated or involuntarily
251 institutionalized, whenever a court orders any person to make
252 periodic payments of a sum certain for the maintenance or support
253 of a child, and whenever such payments as have become due remain
254 unpaid for a period of at least thirty (30) days, a judgment by
255 operation of law shall arise against the obligor in an amount
256 equal to all payments that are then due and owing.

257 (a) A judgment arising under this section shall have
258 the same effect and be fully enforceable as any other judgment
259 entered in this state. A judicial or administrative action to
260 enforce the judgment may be begun at any time; and

261 (b) Such judgments arising in other states by operation
262 of law shall be given full faith and credit in this state.

263 (2) Any judgment arising under the provisions of this
264 section shall operate as a lien upon all the property of the
265 judgment debtor, both real and personal, which lien shall be
266 perfected as to third parties without actual notice thereof only
267 upon enrollment on the judgment roll. The department or attorney
268 representing the party to whom support is owed shall furnish an
269 abstract of the judgment for periodic payments for the maintenance
270 and support of a child, along with sworn documentation of the
271 delinquent child support, to the circuit clerk of the county where



272 the judgment is rendered, and it shall be the duty of the circuit
273 clerk to enroll the judgment on the judgment roll. Liens arising
274 under the provisions of this section may be executed upon and
275 enforced in the same manner and to the same extent as any other
276 judgment.

277 (3) Notwithstanding the provisions in subsection (2) of this
278 section, any judgment arising under the provisions of this section
279 shall subject the following assets to interception or seizure
280 without regard to the entry of the judgment on the judgment roll
281 of the situs district or jurisdiction and such assets shall apply
282 to all child support owed including all arrears:

283 (a) Periodic or lump-sum payments from a federal, state
284 or local agency, including unemployment compensation, workers'
285 compensation and other benefits;

286 (b) Winnings from lotteries and gaming winnings that
287 are received in periodic payments made over a period in excess of
288 thirty (30) days;

289 (c) Assets held in financial institutions;

290 (d) Settlements and awards resulting from civil
291 actions;

292 (e) Public and private retirement funds, only to the
293 extent that the obligor is qualified to receive and receives a
294 lump-sum or periodic distribution from the funds; and

295 (f) Lump-sum payments as defined in Section 93-11-101.



296 (4) Notwithstanding the provisions of subsections (1) and
297 (2) of this section, upon disestablishment of paternity granted
298 pursuant to Section 93-9-10 and a finding of clear and convincing
299 evidence including negative DNA testing that the obligor is not
300 the biological father of the child or children for whom support
301 has been ordered, the court shall disestablish paternity and may
302 forgive any child support arrears of the obligor for the child or
303 children determined by the court not to be the biological child or
304 children of the obligor, if the court makes a written finding
305 that, based on the totality of the circumstances, the forgiveness
306 of the arrears is equitable under the circumstances.

307 (5) In any case in which a child receives assistance from
308 block grants for Temporary Assistance for Needy Families (TANF),
309 and the obligor owes past-due child support, the obligor, if not
310 incapacitated, may be required by the court to participate in any
311 work programs offered by any state agency.

312 (6) A parent who receives social security disability
313 insurance payments who is liable for a child support arrearage and
314 whose disability insurance benefits provide for the payment of
315 past due disability insurance benefits for the support of the
316 minor child or children for whom the parent owes a child support
317 arrearage shall receive credit toward the arrearage for the
318 payment or payments for the benefit of the minor child or children
319 if the arrearage accrued after the date of disability onset as
320 determined by the Social Security Administration.



321 **SECTION 4.** Section 93-5-23, Mississippi Code of 1972, is
322 amended as follows:

323 93-5-23. When a divorce shall be decreed from the bonds of
324 matrimony, the court may, in its discretion, having regard to the
325 circumstances of the parties and the nature of the case, as may
326 seem equitable and just, make all orders touching the care,
327 custody and maintenance of the children of the marriage, and also
328 touching the maintenance and alimony of the wife or the husband,
329 or any allowance to be made to her or him, and shall, if need be,
330 require bond, sureties or other guarantee for the payment of the
331 sum so allowed. Orders touching on the custody of the children of
332 the marriage shall be made in accordance with the provisions of
333 Section 93-5-24. For the purposes of orders touching the
334 maintenance and alimony of the wife or husband, "property" and "an
335 asset of a spouse" shall not include any interest a party may have
336 as an heir at law of a living person or any interest under a
337 third-party will, nor shall any such interest be considered as an
338 economic circumstance or other factor. The court may afterwards,
339 on petition, change the decree, and make from time to time such
340 new decrees as the case may require. However, where proof shows
341 that both parents have separate incomes or estates, the court may
342 require that each parent contribute to the support and maintenance
343 of the children of the marriage in proportion to the relative
344 financial ability of each. In the event a legally responsible
345 parent has health insurance available to him or her through an



346 employer or organization that may extend benefits to the
347 dependents of such parent, any order of support issued against
348 such parent may require him or her to exercise the option of
349 additional coverage in favor of such children as he or she is
350 legally responsible to support.

351 Except as otherwise provided in Section 1 of this act for
352 persons who are incarcerated or involuntarily institutionalized,
353 whenever the court has ordered a party to make periodic payments
354 for the maintenance or support of a child, but no bond, sureties
355 or other guarantee has been required to secure such payments, and
356 whenever such payments as have become due remain unpaid for a
357 period of at least thirty (30) days, the court may, upon petition
358 of the person to whom such payments are owing, or such person's
359 legal representative, enter an order requiring that bond, sureties
360 or other security be given by the person obligated to make such
361 payments, the amount and sufficiency of which shall be approved by
362 the court. The obligor shall, as in other civil actions, be
363 served with process and shall be entitled to a hearing in such
364 case.

365 At the discretion of the court, any person found in contempt
366 for failure to pay child support and imprisoned therefor may be
367 referred for placement in a state, county or municipal
368 restitution, house arrest or restorative justice center or
369 program, provided such person meets the qualifications prescribed
370 in Section 99-37-19.



371 Whenever in any proceeding in the chancery court concerning
372 the custody of a child a party alleges that the child whose
373 custody is at issue has been the victim of sexual or physical
374 abuse by the other party, the court may, on its own motion, grant
375 a continuance in the custody proceeding only until such allegation
376 has been investigated by the Department of Human Services. At the
377 time of ordering such continuance, the court may direct the party
378 and his attorney making such allegation of child abuse to report
379 in writing and provide all evidence touching on the allegation of
380 abuse to the Department of Human Services. The Department of
381 Human Services shall investigate such allegation and take such
382 action as it deems appropriate and as provided in such cases under
383 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
384 Code of 1972) or under the laws establishing family courts (being
385 Chapter 23 of Title 43, Mississippi Code of 1972).

386 If after investigation by the Department of Human Services or
387 final disposition by the youth court or family court allegations
388 of child abuse are found to be without foundation, the chancery
389 court shall order the alleging party to pay all court costs and
390 reasonable attorney's fees incurred by the defending party in
391 responding to such allegation.

392 The court may investigate, hear and make a determination in a
393 custody action when a charge of abuse and/or neglect arises in the
394 course of a custody action as provided in Section 43-21-151, and
395 in such cases the court shall appoint a guardian ad litem for the



396 child as provided under Section 43-21-121, who shall be an
397 attorney. Unless the chancery court's jurisdiction has been
398 terminated, all disposition orders in such cases for placement
399 with the Department of Human Services shall be reviewed by the
400 court or designated authority at least annually to determine if
401 continued placement with the department is in the best interest of
402 the child or public.

403 The duty of support of a child terminates upon the
404 emancipation of the child. The court may determine that
405 emancipation has occurred pursuant to Section 93-11-65.

406 Custody and visitation upon military temporary duty,
407 deployment or mobilization shall be governed by Section 93-5-34.

408 **SECTION 5.** This act shall take effect and be in force from
409 and after July 1, 2022.

